

9 KAR 1:015. Preadministrative proceedings.

RELATES TO: KRS 11A.080, 11A.100

STATUTORY AUTHORITY: KRS 11A.110(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.110(3) requires the Executive Branch Ethics Commission to promulgate administrative regulations to implement KRS Chapter 11A. KRS 11A.080(1) requires the commission to investigate violations of KRS Chapter 11A, upon complaint or its own motion, and establishes procedures for the filing of complaints and commission investigations. This administrative regulation establishes procedures, not established in KRS 11A.080, relating to investigations.

Section 1. Definitions. (1) "Commission" means the Executive Branch Ethics Commission created by KRS 11A.060.

(2) "Complaint" means the "complaint signed under penalty of perjury by any person" as stated in KRS 11A.080(1)(a) and does not include a referral of information to the commission that is provided without being under penalty of perjury.

Section 2. Complaint. (1) A complaint shall state the:

(a) Full name and address of the:

1. Complainant; and
 2. Complainant's attorney, if an attorney has been retained;
- (b) Name of each person alleged to have violated KRS Chapter 11A;
- (c) Employment of each alleged violator, if known;
- (d) Alleged facts that are the basis of the complaint; and
- (e) Statute alleged to have been violated, if known.

(2) The statement that the complaint is signed under penalty of perjury shall appear above the signature of the complainant.

(3) Appearing after the complainant's signature shall appear a line for a Notary Public to sign, the date of Notary Public signature, and the date of expiration of Notary Public commission.

(4) Appearing after the Notary Public's signature, the complainant's attorney, if any retained, shall sign the complaint.

(5) A complaint that does not contain the following shall not be accepted as properly filed with the commission:

- (a) The signature of the complainant;
- (b) The signature of a valid Notary Public;
- (c) The name of a person alleged to have violated KRS Chapter 11A over which the commission maintains jurisdiction; and
- (d) Facts that, if true, would indicate a violation of KRS Chapter 11A.

(6) The complaint shall be part of the records of a preliminary investigation pursuant to KRS 11A.080 and shall remain confidential pursuant to KRS 11A.080(2) until final action is taken by the commission pursuant to KRS 11A.100(3).

Section 3. Answer to Complaint. (1) The documents specified in KRS 11A.080(1)(c) shall be sent, by certified mail, return receipt requested, at the last known address, or by personal service to the person alleged to have violated KRS Chapter 11A.

(2) Within twenty (20) days of receiving a copy of the complaint, a person against whom a complaint is filed may:

- (a) File with the commission a written, signed response to the complaint; and

(b) Mail a copy of the response to the complainant.

(3) The answer, if any, shall be part of the records of the preliminary investigation pursuant to KRS 11A.080 and shall remain confidential pursuant to KRS 11A.080(2) until final action is taken by the commission pursuant to KRS 11A.100(3).

Section 4. Meeting During Preliminary Investigation. (1) At any time during the course of a preliminary investigation pursuant to KRS 11A.080(1)(a), a person being investigated may:

(a) Request a meeting with the commission's attorney and the complainant, if any; and

(b) Have an attorney represent him at this meeting.

(2) The commission's attorney shall use reasonable efforts to schedule a meeting if one has been requested.

(3) This section shall not be construed to prohibit the commission's attorney, or an investigator acting on behalf of the commission, from initiating contact with the person being investigated, or the person's attorney, if he or she has retained counsel.

Section 5. Dismissal of Complaint. (1) The commission may dismiss a complaint if it determines that the facts stated in the complaint, or facts known to the commission upon a preliminary investigation, fail to establish a violation of KRS Chapter 11A.

(2) The commission may dismiss a complaint if the complainant or his or her attorney at any time before the commission takes final action pursuant to KRS 11A.100(3), publicly reveals that the complaint has been filed with the commission or that the commission opened a preliminary investigation based upon the complaint, which may interfere with the preliminary investigation remaining confidential pursuant to the requirements of KRS 11A.080(2). (21 Ky.R. 2566; 22 Ky.R. 25; eff. 7-6-1995; 25 Ky.R. 883; 1577; eff. 1-19-1999; 27 Ky.R. 2193; 2679; eff. 4-9-2001; 45 Ky.R. 376; eff. 10-24-2018.)